IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE EIGHTEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
THE HON'BLE MR JUSTICE C.V.RAMULU

WRIT APPEAL NO : 948 of 2004

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 19/03/2004 in WP NO : 36362 OF 1998 on the file of the High Court.)

Between:

Bandaru Satya Raju, S/o.China Narayana Murthy,
R/o.Basavapalem Village, bhogapuram Mandal,Vizianagaram.

..... APPELLANT

AND

1 The District Collector, Vizianagaram Dist.
2 The Jt.Collector,Vizianagaram Dist.
3 The Revenue Divisional officer, Vizinagaram Dist.
4 The M.R.O.,Bhogapuram Mandal, Vizianagaram Dist.

.....RESPONDENT(S)

Counsel for the Appellant:MR.VENKATESWARA RAO GUDAPATI

Counsel for the Respondent Nos.1 to 4: GP FOR CIVIL SUPPLIES

The Court made the following Oral Judgment: (per Sri Devinder Gupta, CJ)

Appellant before us was appointed as Fair Price Shop Dealer of Basavapalem Village for distribution of essential commodities to the cardholders. While so, 73 rice bags were lifted by the appellant on 15.6.1996 from the Supply Office. The same were not found at the petitioner's shop, but, were found in Kaliyuga Diva Rice Mill at Kavulavada. When the vigilance officials came down to inspect the rice mill, the bags were seized and proceedings under Section 6-A of the Essential Commodities Act, 1955 (for short 'the Act') were initiated. The order of confiscation of the seized stock was passed by the Joint Collector, Vizianagaram, which has since become final and is not under challenge. Appellant was thereafter served with a Show Cause Notice on 16.8.1997 by the Revenue Divisional Officer, Vizianagaram alleging that being a dealer he had diverted rice to black marketing after it was lifted from the Supply Office and thus he had contravened the provisions of the Andhra Pradesh Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973 (for short 'Scheduled Commodities Order'). On 29.8.1997, appellant prayed for dropping of the proceedings against him stating that there was no contravention of the provisions at any point of time by him nor he had any m*ens rea* that the rice bags will be disposed of in black market. He denied the allegations to be false, incorrect and submitted his explanation stating that he lifted the rice bags from the Supply Office with an intent to transport the rice bags to Thuduru village from Bhogapuram Mandal. But, by that time, there was continuous rain and lot of flow of water in the gadda. The driver of the vehicle expressed his inability to reach Thoduru Village. Thereafter, the driver has no option, but to unload the said stock in Kaliyuga Diva rice Mill at Kavulavada located on the same route. Before intimation could be submitted to Mandal Revenue Officer concerned, the stock was seized by the vigilance officials and in the absence of any *mens rea* or any evidence that the stock was being diverted for being sold in black marketing, the present proceedings

initiated against him are uncalled for.

On going through the reply of the appellant, the Revenue Divisional Officer, Vizianagaram passed an order on 15.7.1998 cancelling the authorization of the appellant. But, however, while passing the order of cancellation of the authorization and dealership of the appellant permanently, the Revenue Divisional Officer, Vizianagaram relied only on the order which has been passed on 16.5.1998 by the Joint Collector in proceedings under Section 8 of the Essential Commodities Act. As a matter of fact, after receipt of the reply from the appellant, the District Supply Officer, Vizuianagaram had addressed a communication to Inspector of Police, vigilance Cell, Vizianagaram to inform whether there is any rain at the time of seizure or not. Without there being any such report and without assigning any further reasons, the Revenue Divisional officer proceeded to pass the order canceling the authorization and dealership permanently. The order was questioned by the petitioner before the Joint Collector, who also dismissed the appeal by order dated 14.11.1998 and revision was also dismissed by the Collector, Vizianagaram on 11.12.1998 without going into the merits of the case. Feeling aggrieved, petitioner filed Writ Petition.

Circular No. PDS/II(3)/282/92, dated 8.5.1992 circulated guidelines to the concerned authorities that proceedings under Section 6-A of the Essential Commodities Act, 1955 and under A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, are distinct and separate proceedings and have to be exercised independently. In that view of the matter, as required under clause 3 of Rule 4 of the A.P. Scheduled Commodities (Regulation of Distribution by Card System) Order, 1973, the order to be passed ought to have been a reasoned order specifying the reason why the authorization was liable to be cancelled. The orders passed by all authorities are bereft of any reason. The reason is that since goods confiscated under Section 6-A of Essential Commodities Act, therefore, authorization was liable to be cancelled. Thus, we find it to be a case of non-application of mind. Consequently, the impugned orders are liable to be set aside.

The writ appeal is allowed. The impugned order passed by the learned single judge as also the orders impugned in the writ petition are set aside with direction to the Primary Authority to pass fresh orders in accordance with law after hearing the appellant and after affording reasonable opportunity to him. No costs.

DEVINDER GUPTA,CJ

DATE: 18th August, 2004

C.V. RAMULU,J

Pnb

To

1 The District Collector, Vizianagaram District.
2 The Joint Collector, Vizianagaram District.
3 The Revenue Divisional officer, Vizinagaram Dist.
4 The M.R.O.,Bhogapuram Mandal, Vizianagaram Dist.

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